

1 ROB BONTA
Attorney General of California
2 CHRISTOPHER P. BEESLEY
Supervising Deputy Attorney General
3 MICHAEL D. BUTERA
Deputy Attorney General
4 State Bar No. 295601
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9054
7 Fax: (619) 645-2044
E-mail: Michael.Butera@doj.ca.gov
8 *Attorneys for Respondent*

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION
12

13 **QAYED MURTAZA SHAREEF,**
14
Petitioner,
15
v.
16
KEN CLARK, Warden,
17
Respondent.
18
19

Case No. 8:22-cv-00850-DOC-KS

**ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

Judge: The Hon. Karen L. Stevenson

Action Filed: 4/21/2022

20 Respondent Tammy Campbell,¹ Warden of California State Prison, Corcoran
21 of the California Department of Corrections and Rehabilitation, respectfully
22 submits this Answer to the Petition for Writ of Habeas Corpus under this Court's
23 Order and in accordance with Rule 5 of the Rules Governing Section 2254 Cases in
24 the United States District Court.

25 Respondent denies all allegations contained in Petitioner Qayad Murtaza
26 Shareef's Petition that his custody is unlawful and hereby asserts:

27 ¹ Though the habeas Petition lists Ken Clark as Respondent, Tammy
28 Campbell is the current Warden of California State Prison, Corcoran, as of June,
2022

I.

Shareef is lawfully in Respondent's custody, serving an indeterminate term of twenty-five years to life in state prison for multiple convictions of sex offenses involving children and various sentencing enhancements.

II.

The Petition for Writ of Habeas Corpus is subject to the relitigation bar Congress enacted in 28 U.S.C. § 2254(d). To warrant relief, Shareef bears the burden of showing that the state court's adjudication on the merits of his claims resulted in a decision that was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the" United States Supreme Court, or was "based on an unreasonable determination of facts in light of the evidence presented." § 2254(d).

III.

The Petition is timely.

IV.

In his initial petition before this Court, Shareef raises one claim. He asserts that the trial court violated his Fifth Amendment rights when it admitted incriminating statements, which he asserts were both involuntary and inadmissible absent *Miranda*² warnings from law enforcement. Shareef also filed an addition to his petition, which this Court has construed together with the original as an amended federal petition, in which he presents six additional claims, asserting issues of constitutional and evidentiary error, juror misconduct, alleged *Brady*³ violations, and ineffective assistance of trial and appellate counsel.

The new claims in his addition to the petition, which he added from his state habeas proceedings, are unexhausted, rendering his amended petition mixed. Consequently, Shareef's petition should now be dismissed.

² *Miranda v. Arizona*, 384 U.S. 436 (1966) (*Miranda*)

³ *Brady v. Maryland*, 373 U.S. 83 (1963) (*Brady*)

3 As to his exhausted claim, Shareef was not in custody when police
4 interviewed him so *Miranda* warnings were not required. Further, the
5 circumstances established that his confession was voluntary. Shareef has failed to
6 show that the state court's resolution of his claim was contrary to, or based on an
7 unreasonable application, of clearly established United States Supreme Court
8 authority.

13 This Court should deny the Petition.

5 To the extent the state courts made express and implied factual findings, the
6 presumption of correctness mandated by 28 U.S.C. § 2254(e)(1) applies to such
7 findings.

Shareef is not entitled to an evidentiary hearing to resolve any of his claims.
28 U.S.C. § 2254(e)(2); *Cullen v. Pinholster*, 563 U.S. 170 (2011).

22 The relevant facts and procedural history set forth in the accompanying
23 Memorandum of Points and Authorities are incorporated herein by this reference.
24 Except as expressly admitted here or in the Memorandum of Points and Authorities,
25 Respondent denies that Shareef's confinement is improper, unconstitutional, or
26 unlawful.

1 Wherefore, Respondent respectfully requests that the Petition for Writ of
2 Habeas Corpus be denied and that any request for a certificate of appealability be
3 denied.

4 Dated: March 20, 2023

Respectfully submitted,

5 ROB BONTA
6 Attorney General of California
7 CHRISTOPHER P. BEESLEY
8 Supervising Deputy Attorney General

9 /s/ Michael D. Butera
10 MICHAEL D. BUTERA
11 Deputy Attorney General
12 *Attorneys for Respondent*

11 MDB:PJ
12 SD2022800991
13 83859285.docx
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Case Name: Shareef v. Clark

No. 8:22-cv-00850-DOC-KS

I hereby certify that on March 20, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On March 20, 2023, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Qayed Murtaza Shareef, CDC# BM2497
California State Prison - Corcoran
P.O. Box 3466
Corcoran, CA 93212
In Pro Per

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 20, 2023, at San Diego, California.

P. Johnson
Declarant


Signature